**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9894 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VASANTBHAI HARIBHAI GAJERA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 6 - Respondent(s)**

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**Appearance :**

MR TUSHAR MEHTA for Petitioner(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4,6 - 7, 7.2.1, 7.2.2, 7.2.3,7.2.4
MRS KETTY MEHTA WITH MR UTPAL M PANCHAL for Respondent(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 04/05/2006**

**ORAL JUDGMENT**

1. Rule. Service of rule is waived by Shri Dipen Desai, learned AGP on behalf of the respondent – State Authorities and by Mrs.K.A.Mehta, learned

advocate with Mr.U.M.Pachal, learned advocate advocate on behalf of the respondent No.5.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat dated 17.4.2005 passed in Revision Application Nos.82 to 83 of 2005 in allowing the said revision applications filed by the respondents No.5 herein and quashing and setting aside the orders passed by the Deputy Collector, Choryashi Prant, Surat as well as Collector, Surat passed in respective RTS Appeals and quashing and setting aside the Revenue Entries No.2809 and 3025 and directing to certify the Entry NO.2507 dated 23.1.2001.

3. Few facts are necessary for determination of the present special civil application.

4. That the dispute is with regard to the land bearing Survey No.280 (new) admeasuring H.1-85-00 sq.mtrs situated at village Vesu, Taluka Choryashi, District Surat. That the respondent No.6 herein – Subashbhai Laljibhai Munshi who was erstwhile owner of the land in question had executed sale deed in favour of one deceased Kantibhai Muljibhai Patel being registered on dated 20.5.02 which was registered with the office of the Sub-Registrar, Surat being registration No.2936. It is also the case on behalf of the petitioners that upon execution of the said sale deed and on its registration, Mutation Entry No.2809 came to be mutated in the Village Form No.6 on 21.5.2002 and the same was certified on 29.6.2002. It is also case on behalf of the petitioners that thereafter, the aforesaid deceased Kantibhai Muljibhai Patel transferred the aforesaid land in question in favour of the petitioner herein by way of registered sale deed

dated 25.3.2003 which is registered with the office of the Registrar, Surat at Registration No.1857 and that upon execution of the aforesaid sale deed, Mutation Entry No.3025 came to be mutated in Village Form No.6 on 4.4.2003 which was certified on 29.1.2004. Against the aforesaid, it is the case on behalf of the respondent No.5 – original revisionist that the respondent No.6 herein – said Subashbhai Laljibhai Munshi executed sale deed in his favour on 28.11.1990 and on the basis of the said document, there was pencil entry being Pencil Entry No.2507 in his favour dated 23.1.2001 and and inspite of the said sale deed, the original owner was trying to disturb the possession and therefore, he was constrained to file civil suit being Regular Civil Suit No.1298 of 1990 in the court of learned Civil Judge (S.D.), Surat for declaration and permanent injunction that said Subhashbhai Laljibhai Munshi and another had no right, title or interest in the lands in

question. It is required to be noted that the aforesaid suit came to be filed on valuation of Rs.300/- only.

5. It appears from the record that pencil Entry No.2507 in favour of the respondent No.5 herein – original revisionist came to be deleted and/or was not certified by the authority on the ground that necessary certificate to the effect that the respondent No.5 is an agriculturist was not received. It is the contention on behalf of the respondent No.5 – original revisionist that taking disadvantage of deletion of Entry No.2507 date 23.1.2001 and/or not certifying the said entry in his favour, the respondent No.6 herein sold the land to the deceased Kantibhai Muljibhai Patel by registered sale deed in the year 2002 and thereafter the same came to be sold by the deceased Kantibhai Muljibhai Patel in favour of the petitioner herein and the aforesaid two revenue entries i.e. Entry No.2809 as well as

3025 came to be recorded. Being aggrieved and dissatisfied with the aforesaid two entries i.e. (Entry No.2809 in favour of the deceased Kantibhai Muljibhai Patel ) and (Entry NO.3025 in favour of the petitioner ) as well as order passed by the Revenue Authority dated 10.5.2001 cancelling Entry No.2507 (which was in favour of the respondent No.5 herein), the respondent No.5 herein preferred RTS Appeal before the Deputy Collector being RTS Appeal No.152 of 2003 and the Deputy Collector, Choryashi Prant, Surat by his order dated 28.12.2004 dismissed the said RTS Appeal No.152 of 2003 rejecting the prayer of the respondent No.5 to certify the entry No.2507 and to quash and set aside the Entry No.2809 which was in favour of the deceased Kantibhai Muljibhai Patel. It appears from the record that against the aforesaid order passed by the Deputy Collector, the respondent No.5 herein preferred two RTS Appeals before the Collector, Surat being RTS Appeal No.2 of 2005 and RTS Appeal No.3 of

2005 and the Collector, Surat by his judgment and order dated 17.5.2005 dismissed both the appeals confirming the order passed by the Deputy Collector, Choryashi Prant, Surat and further passed order to make necessary entry on the basis of the decision that may be rendered by the Civil Court in the pending proceedings. Being aggrieved and dissatisfied with the common order passed by the Collector, Surat dated 17.5.2005 passed in RTS Appeals Nos.2 and 3 of 2005 the respondent No.5 herein – original revisionist preferred two Revision Applications before the Secretary, Revenue Department (Appeals), State of Gujarat being Revision Application Nos.82 and 83 of 2005 and the Principal Secretary, Revenue Department (Appeals), State of Gujarat by his judgment and order dated 17.4.2005 not only allowed the said revision applications but also quashed and set aside the Revenue Entry Nos.2809 and 3025 and further directed to certify the Entry No.2507 dated 23.1.2005 in favour of the respondent No.5

herein and also further observed that the sale deed in favour of the respondent No.5 – original revisionist is genuine, correct and signed by the original land owner i.e. Respondent No.6 herein after considering the opinion of the Hand-writing Expert. Being aggrieved and dissatisfied with the common judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat dated 17.4.2006 passed in Revision Application No.82 and 83 of 2005, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

6. Shri Harin P. Raval, learned advocate appearing on behalf of the petitioner has submitted that the Principal Secretary (Appeals), Revenue Department has materially erred in directing to quash and set aside the entry in favour of the deceased Kantibhai Muljibhai Patel i.e. Entry No.2809 and Entry No.3025 which was in

favour of the petitioner as though the petitioners as well as the said Kantibhai Muljibhai Patel had purchased the lands in question by registered sale deed, the same could not have been set aside by the Principal Secretary, Revenue Department (Appeals). It is also further submitted by him that the Principal Secretary, Revenue Department (Appeals), State of Gujarat has also materially erred in directing to certify the entry No.2507 in favour of the respondent No.5 herein – original revisionist. He has also further submitted that exercise of powers by the Principal Secretary, Revenue Department (Appeals), State of Gujarat to go into the disputed questions with regard to title and/or genuineness of the registered sale deed in favour of the respondent No.5 is without jurisdiction. He has also further submitted that findings and observations of the Principal Secretary, Revenue Department (Appeals), State of Gujarat are as if he was deciding the civil

proceedings / suit with regard to genuineness of the registered sale deed, more particularly, alleged registered sale deed in favour of the respondent No.5 herein – original revisionist and that itself is beyond the scope of revisional jurisdiction and RTS proceedings. He has also further submitted that the Collector, Surat has rightly passed the order that in view of pendency of the Civil Suit with regard to the land in question, necessary entry can be made on the basis of the judgment and decree that may be passed by the Civil Court and the same was not required to be interfered with by the Principal Secretary, Revenue Department (Appeals), State of Gujarat. Shri Raval, learned advocate for the petitioner while relying on the decisions of this Court in case of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS reported in 2005(3) GLH 657 and the other decision in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT

AND OTHERS reported in 2005(2) GLR 1370, has submitted that the revenue authorities are bound to give effect to the registered sale deed in the revenue record and if there is any dispute and/or proceedings are pending before the Civil Court, the said entry can be subject to the ultimate outcome of the decision and judgment and decree that may be passed by the Civil Court and if necessary, an additional entry can also be made to avoid further multiplicity of proceedings to the effect that that Civil Suit is pending between the parties qua the subject lands. He has also further disputed the alleged sale deed in favour of the respondent No.5 and has submitted that fact that Civil Suit was filed by the respondent No.5 within few days of the alleged sale deed in the year 1990 and that itself suggests collusion and/or speaks so many things against the respondent No.5. He has also further submitted that even thereafter of the aforesaid suit, the respondent No.5 has allowed to see that

the said suit is dismissed for want of prosecution. He has further submitted that if the entries in favour of the petitioners as well as respondent No.7 herein i.e. Deceased Kantibhai Muljibhai Patel i.e. Entries Nos.2809 and 3025 are restored and/or continued along with Entry No.2507 which was prevailing as on 23.1.2001 and with an additional entry that with regard to the lands in question civil suit being Special Civil Suit No.131 of 2003 is pending in the court of learned Civil Judge (SD), Surat, then he cannot have any objection.

7. Per contra, Mrs.K.A.Mehta, learned advocate with Mr.U.M.Panchal, learned advocate appearing on behalf of the respondent No.5 has submitted that Entry No.2507 was not certified on the ground that certificate of the respondent No.5 being the agriculturist was not produced and the same was contrary to the judgment of this Court in case of EVERGREEN APARTMENT CO-OP HOUSING

SOCIETY V. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE reported in 1991 (1) GLR 113 and therefore, the same has rightly been restored and/or the same is rightly directed to be certified. It is also further submitted by her that taking disadvantage of deletion of the Entry No.2507 the respondent No.6 has sold the land in question to the deceased Kantibhai Muljibhai Patel and thereafter, the said deceased Kantibhai Muljibhai Patel in favour of the petitioner and in view of the registered sale deed in their favour which was executed in the year 1990, more particularly, on 3.11.1990 the land in question could not have been sold by the respondent No.6 and therefore, Entry No.2809 as well as Entry No.3025 are rightly set aside. She has also further submitted that if all the entries are continued subject to the ultimate outcome of the Civil Suit pending between the parties with an additional entry that such suit is pending, she may not and could not have any objection.

8. Shri Dipen Desai, learned AGP for the respondent – State Authorities has requested this Court to pass an appropriate order in the facts and circumstances of the case.

9. At the outset it is required to be noted that the dispute is with regard to the mutation entry in the revenue record with regard to the lands in question and as held by the Hon'ble Supreme Court and this Court in catena of decisions, entry in the revenue record does not confer any right, title or interest over the property ipso facto and it is only for fiscal purpose for the purpose of recovery of collecting the revenue and to establish prima facie possession. It is also settled position of law and not disputed by the respective learned advocates on behalf of the parties that the revenue authorities while dealing with the RTS proceedings, has no jurisdiction to decide the disputed question of

title and/or legality and validity of any transaction and / or genuineness of the sale deed, transaction and/or will. If there is any dispute with regard to the title, then the parties are required to be relegated to approach the Civil Court for establishing their rights and on ultimate decision of the Civil Court, entry can be mutated on the basis of the judgment and decree that may be passed by the Civil Court on crystallizing the rights between the parties.

10. As held by this Court in the decisions of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS and GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND OTHERS (Supra), the revenue authorities are bound to give necessary effect by way of necessary entry in the revenue record on the basis of the registered sale deed, however, if there is any dispute and/or if the said transaction is in breach of any other law, then,

simultaneously, an additional entry can be made with regard to the same and either parties are required to be relegated to approach the Civil Court and/or the revenue authorities may inform appropriate authority under the Act, of which, the transaction is in breach, to initiate the proceedings and the said entry will be subject to the result of the same.

11. In the present case, the respondent No.5 claims to have purchased the land in question from the respondent No.6 herein by registered sale deed dated 3.11.1990. However, it is required to be noted at this stage that the respondent No.5 tried to mutate his name in the revenue record qua the land in question on the basis of the aforesaid alleged sale deed which came to be executed in the year 1990 for the first time in the year 2001. Initially, Entry No.2507 was mutated as pencil entry on 23.1.2001 and thereafter the same was deleted and/ or was

not certified by order of Circle Inspector by order dated 10.5.2001. It is also required to be noted at this stage that the said order dated 10.5.2001 was not challenged by the respondent No.5 before the Deputy Collector till 2004 and in between the respondent No.6 sold the land in question in favour of the deceased Kantibhai Muljibhai Patel by registered sale deed dated 20.5.2002 and the necessary entry was mutated in the revenue record with regard to the said transaction being Entry No.2809 on 21.5.2002 and the said entry came to be certified on 29.6.2002 and even thereafter said Kantibhai Muljibhai Patel sold the land in question to the petitioner by registered sale deed dated 25.3.2003 and necessary entry was mutated in the revenue record as regards registration of the said sale deed being Entry No.3025 dated 4.4.2003 and said entry also came to be certified immediately. Only thereafter the respondent No.5 herein challenged the Entry NO.2809 before the Deputy Collector,

Choryashi Prant, Surat on 3.5.2003 being RTS Appeal No.152 of 2003 as well as also challenged the order passed by the Circle Inspector dated 10.5.2001 with respect to the deletion of not certifying the Entry No.2507 before the Deputy Collector, Choryashi Prant, Surat on 20.1.2004 being RTS Appeal No.16 of 2004. The learned advocate appearing on behalf of the respondent No.5 is not in a position to satisfy this Court why the order passed by the Circle Officer dated 10.5.2001 in not certifying the entry No.2507 was not challenged immediately and came to be challenged in the year 2004 i.e. On 20.1.2004. Be that it may. In the mean time, there were two registered sale deeds and two entries i.e. Entry No.2809 in favour of the deceased Kantibhai Muljibhai Patel and Entry No.3025 in favour of the petitioner on the basis of aforesaid two registered sale deeds. It is required to be noted that the respondent No.5 herein has also filed Special Civil Suit No.131 of 2003 challenging the

sale deed in favour of the deceased Kantibhai Muljibhai Patel which is still pending in the court of learned Civil Judge (SD), Surat. It is also required to be noted that as held by this Court in aforesaid two decisions, the revenue authorities are required to make necessary additional entry on the basis of the registered sale deed and in view of the fact that there is Civil Suit pending, the said entries can be subject to the ultimate outcome of the decision that may be taken by the learned Civil Judge (S.D.) in Special Civil Suit No.131 of 2003. Under the circumstances and considering the limited consensus between the parties, this Court is of the considered opinion that let all the entries i.e. Entry No.2507 (as prevailing on 23.1.2001), Entry No.2809 as well as Entry No.3025 be continued and/or restored subject to the ultimate outcome of Special Civil Suit No.131 of 2003 and necessary entry can be made on the basis of the judgment and decree that may be

passed in Special Civil Suit No.131 of 2003 and the Revenue Authorities may be directed to make an additional entry that there is civil suit being Special Civil Suit No.131 of 2003 pending in the court of the learned Civil Judge (SD), Surat and the aforesaid entries would be subject to ultimate outcome of the said Civil Suit.

12. Under the circumstances and for the reasons stated above, the impugned order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat dated 17.4.2006 passed in Revision Application Nos.82 and 83 of 2005 is modified to the extent that let all the entries i.e. Entry No.2507 (as prevailing on 23.1.2001) be also restored as on that date along with Entry No.2809 as well as Entry No.3025 be continued and the revenue authorities are directed to make necessary entry in the revenue record that Special Civil Suit No.131 of 2003 is pending between the parties and the aforesaid

entries would be subject to the ultimate outcome of the judgment and decree that may be passed by the Civil Court to be passed in Special Civil Suit No.131 of 2003. It is also further observed that necessary further entry can be made on the basis of the judgment and decree that may be passed by the Civil Court in Special Civil Suit No.131 of 2003.

13. It is required to be noted that while deciding the revision applications arising out of the RTS proceedings the Principal Secretary, Revenue Department (Appeals), State of Gujarat has given finding with regard to the alleged sale deed in favour of the respondent No.5 and has observed that the said alleged sale deed in favour of the respondent No.5 is genuine. He has also further given finding on considering the opinion of the Hand-writing Expert that the signature in the alleged sale deed in favour of the respondent No.5 is of the respondent No.6 and

the same is genuine. Such an exercise by the revisional authority is beyond his jurisdiction and the scope and ambit of RTS proceedings. Shri Rawal, learned advocate appearing on behalf of the petitioners is right in making grievance and requesting that appropriate observations may be made that said finding of the revisional authority may not come in the way of the petitioners in the pending proceedings before the Civil Court. Considering the above, it is observed that the findings / observations of the Principal Secretary, Revenue Department (Appeals), State of Gujarat made in its impugned judgment and order with regard to the alleged sale deed in favour of the respondent No.5 are absolutely unwarranted and the same will not come in the way of the parties in the pending proceedings before the Civil Court i.e. Special Civil Suit No.131 of 2003 and the learned Trial Court is directed to decide and dispose of the said Special Civil Suit No.131 of 2003 on its own

merits and in accordance with law and considering the evidence that may be adduced and without in any way being influenced by the observations made by the Principal Secretary, Revenue Department (Appeals), State of Gujarat made in the impugned order.

14. Before parting with this judgment and order, this Court considers it just and proper to observe that on going through the judgment and order passed by the Principal Secretary, Revenue Department (Appeals), State of Gujarat, it appears that he has given finding with regard to alleged sale deed in favour of the respondent No.5 after considering the opinion of the Hand-writing Expert and has given finding that signature in the sale deed which is in favour of the respondent No.5 of respondent No.6 is genuine and said sale deed is also genuine. Thus, he has tried to decide the disputed questions of title and the transaction and genuineness of the sale

deed which is beyond the jurisdiction while exercising the RTS proceedings. It appears that the Principal Secretary, Revenue Department (Appeals), State of Gujarat by entering into such disputed questions has proceeded further as if he was deciding the civil suit proceedings, which is not permissible at all and the same is obviously beyond the powers and scope and ambit of jurisdiction. While exercising the RTS jurisdiction and dealing with the RTS proceedings, the revenue authorities are not required to go into the question of title and/or genuineness of the transaction and it is left to the Civil Court in an appropriate proceeding if initiated. Thus, it appears that the Principal Secretary, Revenue Department (Appeals) has acted beyond his jurisdiction and scope of RTS proceedings which was not at all permissible. Therefore, it is required to be observed that in future while deciding the Revision Application arising out of RTS proceedings, he may take due

care of his powers and scope and ambit of RTS proceedings. It is also considered that a copy of this judgment and order requires to be sent to the Chief Secretary to the Government of Gujarat, so also, the Principal Secretary, Revenue Department (Appeals), State of Gujarat to see that in future due care can be taken in future while dealing with such RTS proceeding.

15. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

16. Office is directed to send the copy of this judgment and order to the Chief Secretary to the Government of Gujarat, so also, the Principal Secretary, Revenue Department (Appeals), State of Gujarat.

[ M.R.Shah, J.]

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